IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Shiv Kumar Vs. State of Rajasthan & Others
(D.B. HABEAS CORPUS PETITION NO.3252/2006)

D. B. Habeas Corpus Petition under Article 226 of the Constitution of India.

Date of Order: October 18, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Vishwajeet Mantri, for the petitioner.

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Heard learned counsel for the parties.

2. The prisoners viz. Brij Mohan @ Ram Singh and Gulla @ Satya Narayan (Life Convicts), who have served the sentence for a period of more than 23 years, filed this Habeas Corpus petition through their relative.

3. In the earlier Habeas Corpus Petition bearing No.7809/2005 this court issued directions to Advisory Board on January 3, 2006 to consider the cases of these prisoners objectively in accordance with para 138 of the Rajasthan Prisoners Rules,1951. The Advisory Board did not find the cases of these prisoners fit for premature release and the matter was forwarded to the State Government. The Deputy Secretary vide letter dated May 27, 2006 informed the Superintendent Central Jail Jaipur as under:-

"उपरोक्त दोनों बंदियों के संबंध में पुलिस अधीक्षक, ग्वालियर ने अंकित किया है

कि उक्त दोनों बंदियों के परिवार चक धमनका में नहीं रहते। 20-25 वर्ष पूर्व रहते थे। यदि बंदियों को समयपूर्व रिहा किया जाता है तो पुन: उपस्थित नहीं होंगे। जेल अधीक्षक ने भी दोनों बंदियों के स्थाई निवास की जानकारी नही होना बताया है जिससे बंदियों के पुनर्स्थापना की संभावना से इन्कार किया है। बंदीगण पूर्व में पैरोल पर भी नहीं रहे, अत: समयपूर्व रिहाई की प्रवन्दना नहीं की। जिला मजिस्ट्रेट, दोसा व ग्वालियर ने भी रिहाई की प्रवन्दना नहीं की है एवं सलाहकार मण्डल ने भी बंदियों के गंभीर अपराधों के मददेनजर समय पूर्व रिहाई की प्रवन्दना नहीं की। प्रकरण पर गहनता से विचारोपरान्त सलाहकार मण्डल की सिफारिशों को स्वीकार करते हुए उपरोक्त दोनों बंदियों को समय पूर्व रिहा नहीं करने का निर्णय लिया गया है।"

(Emphasis supplied)

4. Evidently Rule 12 of the Rajasthan Prisoners (Shortening of Sentence) Rules, 1958 (for short `the Rules') has not been properly considered by the State. Rule 12 provides as under:-

> "12. Consideration by Government- On receipt of the proceedings of the Advisory Board, and other relevant papers, the Government shall order release of prisoner in cases for which, having regard to all the circumstances of the case, it considers that the prisoner may be released without any danger to the society. In case of a prisoner by Court Martial the Government shall forward its recommendations to the Government of India for necessary orders.
>
> (Emphasis supplied)

5. Rule 12 is mandatory and the only ground on which the Government can refuse the release of the prisoner is that his release could not be without danger to the society. The Government in the letter dated May 27, 2006 addressed to the Superintendent Central Jail Jaipur however stated that यदि बंदियों को समयपूर्व रिहा किया जाता है तो पुन: उपस्थित नहीं होंगे। The

Government no where stated that release of the prisoners could not be without danger to the society. A look at Rule 12 of the Rules demonstrates that the Government on receipt of the proceedings of the Advisory Board and other relevant papers has to take independent decision. It is incumbent on the Government to release the prisoner if it considers that the prisoner may be released without any danger to the society. Coming to the facts of the instant matter we notice that Government has neither based its decision on Rule 9 nor considered the mandatory provisions of Rule 12 and declined to release the prisoners on the extraneous grounds which are not relevant under the Rules.

6. Rules framed by the Government are guidelines for exercising its powers under Article 161 of the Constitution. In Laxman Naskar Vs. Union of India (2000 CrLJ 1471) their Lordships of the Supreme Court indicated thus:- (Para 3)

> "It is settled position of law that life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely, but if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to the Government policy/ instructions in force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy/ instructions then the only right which a life convict can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be consistently with the legal position and the Government policy/ instructions prevalent at that time."

The Apex Court further observed thus:- (Para 5 and 6)

> "5. All the "Life convicts" before us have completed continued detention of 20 years including remission earned. From the counter filed by the State, we find that the Government has also framed guidelines for this purpose. To consider the prayer for premature release of the "life convicts", police report was called for on the following points:-
> (i) Whether the offence is an individual act of crime without affecting the society at large;
> (ii) Whether there is any chance of future recurrence of committing crime;
> (iii) Whether the convict has lost his potentiality in committing crime;
> (iv) Whether there is any fruitful purpose of confining this convict any more;
> (v) Socio-economic condition of the convict's family."

> "6. Though the police report did not cover all the above points, the prayer of "life convicts" for premature release was rejected mainly on the ground of objections by police. The police had only reported about the chances of the petitioners committing crime again. It becomes apparent from the record that the Government did not consider the prayer for premature release as per the rules. The Government did not pay sufficient attention to the conduct-record of the petitioners while in jail nor did it consider whether they had lost potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the socio-economic conditions of the convict's family were taken into account. Thus the orders of the Government suffer from infirmities and are liable to be quashed."
>
> (Emphasis supplied)

7. Undeniably the two prisoners in the instant case have completed continued detention of 23 years including remission earned. The Government did not pay sufficient attention to the conduct-record of these

prisoners while in jail nor did it consider whether they had lost their potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the socio economic conditions of the prisoner's family were taken into account. More importantly the mandatory provisions contained in Rule 12 have been flouted. Thus the order of the Government in declining the release of the prisoners suffer from infirmities and is liable to be quashed.

8. For these reasons, instant habeas corpus petition is allowed and both the detenu Brij Mohan @ Ram Singh S/o Kalwa and Gulla @ Satya Narayan S/o Bhaiya Lal, who are confined in Central Jail Jodhpur are directed to be released forthwith, if not required to be detained in any other case.

It is unfortunate that the Deputy Secretary (Home) has flouted the provisions contained in Rule 12 of 1958 Rules and unnecessary curtailed the liberty of both the detenu. We instead of imposing the cost on erring officer grant liberty to the prisoners, if they so choose, to initiate action for claiming compensation against the erring officer. The State may also take appropriate action against the erring officer, who did not care to properly look at the mandatory provisions contained in Rule 12 of 1958 Rules. Copy of this order may be remitted to Chief Secretary, State of Rajasthan.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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